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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

REICHLE, KARIN M

ART UNIT PAPER NUMBER

3761

14

DATE MAILED: 04/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/037,278

Applicant(s)

HAMMONDS ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10.11.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The amendment filed 1-20-04 was not in compliance with 37 CFR 1.121, specifically the amendments to the paragraph after the title, to page 9, line 20, last line thereof and to page 4, line 7. In the first two instances, the amendments were made compliant by the Examiner with red ink changes. The amendment to page 4, line 7 was not entered. The letters used in the drawings when described in the text were disposed between quotation marks. Such quotation marks also have been deleted by the Examiner in red ink.

Specification

Drawings

2. The drawings were received on 1-20-04. These drawings are not approved by the examiner. The replacement drawings did not include corrections of all the objections. No replacement sheet for Figures 1D and 1E was filed. Figures 5A-7 are not photomicrographs as described.

3a. The drawings are objected to because where is Figure 1D'? See the description at page 5, line 25, line 2 thereof as amended. In Figures 5A-7, the descriptive text should be avoided. In Figure 1A, the line from the left 70 should be dashed to denote underlying structure. In Figure 1E, a line from the right 36 should be provided. In Figure 1D, the lines from 56 should extend to engagement members. Also it appears that the lines from the middle 72 and the lower

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70 should be dashed to denote underlying structure. In Figure 1F, no quotation marks should be used. A line from each numeral should be provided leading to the structure it denotes and if that structure underlies other structure the line should be dashed. Figures 1A-1D do not show 56, 58, 44 and 60 as described in the paragraph at page 7, line 5. Where is 36' in Figures 1C, 1D and 1E? See, e.g., the amendment to page 9, line 30. In Figures 2A-2E, where are 110, 112, 114, and 116 as described at page 13, lines 28-31? A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3b. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention of claims 1-27, e.g., the sheets, the core, the perforation lines, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Description

4. The disclosure is objected to because of the following informalities: 1) In the description of FIG. 2C on page 6, line 6, "3C" should be --2C--. 2) On page 4, line 7, after "surface", --of-- should be inserted. 3) In the paragraph at page 7, line 20, should the description refer to Figures 2A-2E? 4) In the description and drawings the wings are referred to both as 36 and as 36, 36'. The same numeral(s) should be used consistently throughout the specification. 5)

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In the amendment to page 14, line 23, lines 4 and 6, should "2A" and "2B" be --5A-- and --5B--, respectively?

Appropriate correction is required.

Claim Objections

5. Claims 1-28 are objected to because of the following informalities: in claim 1, line 4, after "napkin", insert --further--. On line 10, change "the first" to --each first--. On the second to last line, after "undergarment", insert --when the fabric is--. In claim 3, last line, delete "corresponding". In claims 2 and 4, line 1, "the" should be --each--. In claim 10, line 3, delete "and" and on line 4, before "an", insert --and--. The comments with respect to claim 1, lines 10 and the second to last line, and claims 2-4 also apply to similar language in claims 10-13, 17, 19-22, and 27. Additionally in claim 10, second to last line "a fabric" should be --the fabric-- and in claim 15, line 2, "can be used" should be --adapted--. In claim 28, last line, "the" should be --a--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. Claims 1-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, the description of the fastener components is unclear, i.e. is the unengaged first fastener component in the last subsection and one of the fastener components claimed on lines 9-11 one and the same? How many components at a minimum are required?

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Also, the description of the components is incomplete, i.e. how are the components positioned with regard to the wings so as to be able to function as set forth in the last two subsections, i.e. which surfaces are they on? All the same? Different? In regard to claim 2, a positive structural antecedent basis for "the engagement section" should be set forth. In regard to claim 10, see discussion of claim 1 supra which also applies here with regard to similar language.

Additionally the preamble on lines 1-2 and 5-6 and the claim body on lines 7 et seq (note especially line 7 with regard to lines 5-6) are inconsistent in that the preamble claims a subcombination of an attachment system whereas the claim body claims the combination of the attachment system and a sanitary napkin. The preamble and claim body should be consistent. In regard to claim 17, is the unengaged first fastener component in the last subsection and one of the fastener components claimed on lines 9-10 one and the same, i.e. how many components at a minimum are required? If so, on the third to last line, "an unengaged first fastener component" could be amended as --the first fastener component which is not interengaged--. In regard to claim 27, see discussion of claim 17 which applies here to similar language. In regard to claim 28, the description of the fasteners is unclear, i.e. is the fastener component in the last subsection and one of the fasteners claimed on lines 2-3 one and the same? How many components at a minimum are required? Also the description of the components is incomplete, i.e. how are the components positioned with regard to the wings so as to be able to function as set forth in the last two subsections?

Claim Language Interpretation

7. Lines 9-10 and 12-13 of claim 1 are interpreted to require a pair of first fastener components one of each being positioned on one of each of the wings and a pair of cooperating fastener components one of each being positioned on one of each of the wings. This also applies to like language in the other independent claims. Claims 10-16, due to the lack of clarity discussed supra, are interpreted to claim a system for use with a napkin(it is noted that the claims would appear to be redundant with at least some of claims 17-26 if interpreted as a system and napkin combination).

Claim Rejections - 35 USC § 102

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 1-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Hammons et al '484.

In regard to claims 1-28, see Figures 1-10, i.e. the topsheet is 22, the backsheet is 26, the core is 24, the adhesive and the peel strip are 58-59, the first and second wings are 34, 36, see also paragraphs 84-87 of Hammons et al, i.e. can be of liquid permeable material or liquid impermeable material, the fastener components are 102, 104, see also paragraphs 88-99, 107 and 108, and thereby Scripps '724 at col. 12, lines 36-42, and thereby Noel et al '520 at, e.g., Figures, col. 6, lines 48-51 and col. 8, lines 3-9, i.e. nonwoven pattern unbonded loop material. See also Figures 6-8 and paragraphs 121-123, i.e. the fastener component is the one fastener 102, 104 directly adjacent exterior of the undergarment. It is noted that both components, i.e. the hooks

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and loops, include engagement members, see page 12, lines 11-12 of the instant specification.

The last two subsections of claims 1, 10, 17, and 27 and lines 2 and 4 of claim 28 recite capabilities, function or properties of the claimed structure. The Hammons et al device includes all the claimed structure. Therefore there is sufficient factual basis for one to conclude that the capabilities, functions and properties of such claimed structure is also inherent in the same structure of Hammons et al, see MPEP 2112.01.

In regard to claims 2-3, 11-12 and 19-21, also see Figure 11, and paragraph 123.

In regard to claims 6, 15, and 24, see Figures 25-28 and paragraph 142.

In regard to claim 26, see also elements 160 and 161 and paragraphs 160-164.

10. Claims 1, 6-10, 15-18 and 24-28 rejected under 35 U.S.C. 102(b) as being anticipated by Bien '929, and thus Mattingly '047.

With regard to claims 1, 6-10, 15-18 and 24-28, see Figures of Bien, i.e. topsheet is 28, the backsheet is 30, the core is 32, the adhesive and peel strip are 34, 36 and the flaps and fastener components are set forth at col. 7, lines 29-59, and thereby Mattingly '047 at col. 6, line 44-col. 7, line 5, col. 2, lines 17-32 and col. 8, lines 9-41. It is noted that the portions of Mattingly are considered to teach that the cohesive structure in Figure 10 could be adhesive or VELCRO instead, i.e. the fastener component is the one fastener directly adjacent exterior of the undergarment. It is noted that both components, i.e. the hooks and loops of the VELCRO, include engagement members, note page 12, lines 11-12 of the instant specification. The last two subsections of claims 1, 10, 17 and 27 and lines 2 and 4 of claim 28 as well as claims 6, 15, 18, 24, and 26 recite capabilities, function or properties of the claimed structure. The Bien reference teaches a device which includes all the claimed structure. Therefore there is sufficient

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factual basis for one to conclude that the capabilities, functions and properties of such claimed structure is also inherent in the same structure of Bien et al, see MPEP 2112.01.

Claim Rejections - 35 USC § 103

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Claims 4-5, 13-14 and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bien '929 in view of Leak et al '041.

Applicant claims the cooperating fastener component being of nonwoven loop material and a pattern unbonded material whereas Bien only teaches that such is a loop material. However, see Leak et al, col. 1, lines 40-50 and col. 8, lines 55-59 and abstract. To employ a pattern unbonded nonwoven loop material as taught by leak et al on the Bien device as the loop material would be obvious to one of ordinary skill in the art in view of the recognition that Bien teaches a situation in which hook and loop fasteners have been employed and that such would also be economically efficient which would be desirable in any disposable article and the article of Bien being disposable.

13. Claims 2-3, 11-12 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bien '929 in view of Osborn III '884.

Applicant claims nonisotropic engagement members oriented orthogonally to the attachment direction which Bien does not teach. Bien does teach the desire to use the flaps to properly position the article in the undergarment. See also Osborn III '884, Figures 44-45 and col. 45, line 67-col. 46, line 1, i.e. hooks oriented in the direction shown in the Figures improves

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gripping properties. To make the hooks of Bien nonisotropically formed and orthogonally oriented relative to the direction of attachment as taught by Osborn would be obvious to one of ordinary skill in the art in view of the recognition that such would improve gripping, i.e. securement would be improved which would better insure proper positioning of the article in the undergarment, i.e. accidental loss of securement would lead to improper positioning, and the desirability of proper positioning by Bien.

Double Patenting

14. Due to the number of claims under consideration and the lack of clarity thereof, i.e. see rejections supra, for the purposes of the following rejections the invention of the claims of the instant application will be considered a sanitary napkin with a pair of wings having selectively releasable interengaging fasteners and another fastener component including a plurality of engagement members which fasteners and fastener component are capable of fastening the napkin to an undergarment, see, e.g., claim 28. The invention of the '277 application('740 published application) will be considered to also be a sanitary napkin with a pair of wings having selectively releasable, interengaging fasteners and another fastener component including a plurality of engagement members which fasteners and fastener component are capable of fastening the napkin to an undergarment but the sanitary napkin additionally includes an garment attachment adhesive and a peel strip and the napkin structure is capable of or used in a method which includes fastening the wings over the top of the napkin during removal of the peel strip, positioning the napkin in the undergarment with the adhesive and disengaging the wings from over the napkin to under the napkin and around the undergarment to further secure the napkin in

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the undergarment, see, e.g., claim 9 of that application. The invention of the '287 application('856 published application) will be considered to also be a sanitary napkin with a pair of wings having selectively releasable, interengaging fasteners but the sanitary napkin additionally includes each of such wings including a first fastener component and a cooperating fastener component whereby the wings are fastenable to one another by fastening one first fastener component on one wing to a cooperating fastener component on the other wing, i.e. the other first fastener component and cooperating component are not engaged with each other, and each of the first fastener components includes a plurality of nonisotropic engagement members such that the component has an axis of maximum engagement which axis is generally orthogonal to the direction of attachment, see, e.g. claim 40.

15. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321[®] may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

16. Claims 1- 28 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the pending claims of copending Application No. 10/037,277(published Application No. 2003/0036740) and Application No. 10/037,287(published Application No. 2003/0045856), respectively. Although the conflicting claims are not identical, they are not patentably distinct from each other because since the effective filing dates of all the applications is the same, the one way In re Vogel test applies, i.e. are the claims of the instant application obvious in view of the other applications. The answer is yes. As best understood, see discussion supra, the claims of the instant application are generic to or broader than the claims of the other applications. Once an applicant has received a patent for a species or more specific embodiment, he(she) is not entitled to a patent for the generic or broader invention. This is because the specific anticipates the broader. See In re Goodman, supra.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

17. Applicants remarks on pages 12-13 with regard to the matters of form have been considered but are either deemed moot in that the issue has not been reraised, or is deemed not persuasive for the reasons set forth supra. Applicants remarks with respect to the 102 rejections have been considered but are deemed not persuasive. Specifically Applicants position is that

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since there is more than one embodiment and all the embodiments do not include mechanical fasteners, all the embodiments taught by the references do not necessarily possess the characteristics of the claimed invention and thereby the reference does not teach the claimed invention. The Examiner is unaware of any authority which requires all embodiments disclosed by the applied prior art must necessarily possess the characteristics of the invention of the claims. If one embodiment disclosed by the prior art reads on the claims the application of the prior art is proper. Applicants do not argue that there is no embodiment taught by the references which read on the claims. Applicants remarks with respect to the combination of Bien and Leak are considered not persuasive in light of the disclosure of Leak at col. 8, lines 55-59 and the claim language which does not require that the loop material only forms a portion of each wing. Applicants remarks with regard to the combination of Bien and Osborn also have been considered but are deemed not persuasive in light of Osborn at col. 2, lines 38-41 which discloses the napkin may, i.e. infers it also may not, be extensible, i.e. Osborn does not have to be extensible. Applicants remarks with regard to the double patenting rejection and common ownership have been noted.

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to the claims and specification.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

K. M. Reichle 3/29/04
Karin M. Reichle
Primary Examiner
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